IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1516 OF 2005

Ravish Infusions Ltd.
and Ors. ...Petitioners

V/s

Kanit Shah and Anr. ...Respondents.

Mr. Ashok Bhatia for the applicants.
Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 24th March, 2005

P.C.:

1. Heard the learned Counsel for the petitioners.

2. Petitioners are challenging the issuance of process by the Additional Chief Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai in a criminal complaint filed by respondent No.1 under sections 138 and 141 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the petitioners that the respondent No.1 has failed to file the complaint within limitation. It is submitted that respondent No.1 had demanded payment of the dishonoured cheque by letter dated 1/11/1995 and, thereafter, the cheque was presented

again and the second notice was issued on 11/12/1995. It is submitted that, therefore, in view of the judgment in the case of Sadanandan Bhadran Vs. Mahadevan Sunilkumar reported in 1998 ALL MR (Cri) 1613 (SC), the complaint and the process which is issued was liable to be quashed. This submission cannot be accepted. From the perusal of the complaint, it can be seen that the complainant in para 3 of the complaint has stated that the complainant had informed the accused No.1 about dishonour of cheque by his letter dated 1/11/1995. Therefore, this letter dated 1/11/1995 was not a statutory notice of demand. The complainant has stated that, thereafter, the accused informed the complainant to again present the cheque for encashment and accordingly it was presented for encashment again and, thereafter, it was dishonoured. In para 4 of the complaint, it is stated that, thereafter, demand notice was served on accused No.1 by letter dated 11/12/1995. Thus, it is obvious that the first letter dated 1/11/1995 was not a demand notice as contemplated under the provisions of section 138 of the Negotiable Instruments Act and the first demand notice was sent on 11/12/1995. The ratio of the judgment in the case of Sadanandan Bhadran (supra) would not be applicable to the facts of the present case.

4. It is further submitted that there are no averments in the complaint that the petitioners are in charge of and responsible for the day-to-day affairs of the Company and conduct and business of the company. In support of the said submission, the learned Counsel for the petitioners relied upon the judgment of the Supreme Court in the case of State of Haryana Vs. Brij Lal Mittal reported in 1998 Cr.L.J. 3287 and the judgement of the Bombay High Court in the case of H.M. Dave Vs. Gitanjali Shah reported in 1998 (4) LJ 830. He also relied upon the judgment of the Supreme Court in the case of K.P.G. Nair Vs. Jindal Menthol reported in 2000 JT (SC) 519. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. In para 1 of the complaint, there is a specific averment that the accused No.1 is a Limited Company. Accused No.2 is a Chairman and Managing Director of the Company and accused Nos. 3 and 4 are Directors of the Company. It is further stated that accused Nos. 2 to 4 are managing the affairs of the Company. Thereafter, further particulars have been given about the transaction in paras 2 and 3.

5. In my view, it cannot be said that the averments made in the complaint are vague or that there are no averments in the complaint at all. Ultimately, there cannot be any strait-jacket formula for determining the nature of the averments which are to be made in the complaint in order to establish whether such averments are sufficient or not. As long as the ingredients of sections 138 and 141 are made out from the averments in the complaint, such averments, in my view, would be sufficient for the purpose of filing complaint against the accused. In a given case where there are absolutely no averments, the accused can make a grievance that the process is liable to be quashed qua such accused against whom no allegations or averments are made at all in the complaint. In the present case, in my view, there are sufficient averments and, therefore, there is no reason to quash the process issued by the Trial Court. In the case of State of Haryana Vs. Brij Lal Mittal reported in 1998 Cr L.J. 3287 relied upon by the petitioners, there were absolutely no averments made against the accused. It is observed that even prima facie no averments were made that the accused were in charge of the company and they were responsible for the conduct of its business. In view of this, Supreme Court quashed the complaint against the accused. In the case of Katta

Sujatha (Smt) Vs. Fertilizers & Chemicals reported in JT 2002 (10) SC 134 also, in the complaint, no allegations were made against the 4th accused who was the appellant before the Supreme Court and in the light of this fact that no averments were made, the complaint was quashed qua the appellant by the Supreme Court. In the present case, specific averments are made in para 1 of the complaint. The ratio of the aforesaid judgments, therefore, will not be applicable to the facts of the present case.

6. Criminal Application is accordingly dismissed.

V.M. KANADE, J.